SUPREME COURT OF THE UNITED STATES.

No. 100.57

ELIZUR MITCHELL AND WILLIAM B. GLOVER, PLAINTIFFS IN ERROR,

vs.

THE CITY OF BURLINGTON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

INDEX.

	Original.	Print.
Precipe	1	1
Writ of summons	3	1
Return on writ	4	1
Petition	5	2
Copies of bonds	13	4
Amended petition	23	6
Answer	24	6
Charter of Burlington, and amendments	28	7
Demurrer of plaintiff to answer	75	21
Proceedings in district court	79	22
Proceedings in circuit court	80	23
Judgment	81	23
Writ of error	83	24
Bond in error	85	24
Clerk's certificate	86	24
Citation and service	87	25
Assignment of errors	89	25

1 Pleas before the circuit court of the United States within and for the district of Iowa, at a term thereof begun and holden at Des Moines, on the second Tuesday, it being the 10th day of May, A. D. 1864.

Be it remembered, that on the 8th day of March, A. D. 1861, the following præcipe was filed in the office of the clerk of the district court of the United States in the district aforesaid, in the southern division thereof, to wit:

Præcipe.

District court of the United States for the district of Iowa, southern division

ELIZUR MITCHELL AND WM. B. GLOVER
v.
THE CITY OF BURLINGTON.

The clerk will issue a summons in the above-entitled cause, returnable to the next term at Keokuk.

In debt five thousand dollars, ($5,000;) damages, five thousand dollars, ($5,000.)

JAMES GRANT, *for Pl'ffs.*

2 And afterwards, on the said 8th day of March, A. D. 1861, was issued, to wit:

3 *Copy of writ of summons.*

UNITED STATES OF AMERICA, *district of Iowa*, to the marshal of said district, greeting:

In the name of the President of the United States we command you to summon the city of Burlington, a body corporate, citizen of and resident in the State and district of Iowa, if it be found in your bailwick, to be and appear before the district court of the United States for the district of Iowa, aforesaid, at Keokuk, in said district, on the third Tuesday in the month of March, A. D. 1861, to answer unto Elizur Mitchell, and William B. Glover, citizens of the State of Connecticut, of a plea of debt, $5,000; damages, $5,000, (five thousand dollars,) on bond; and have then and there this writ.

Witness the Honorable J. N. Love, judge of said district court, this 8th day of March, A. D. 1861, and in the eighty-fifth year of the independence of the United States of America.

[SEAL.] Attest:

J. C. BURNS, *Clerk,*
By A. S. WALLING, *Deputy.*

4 On which writ was endorsed the following return:

This 8th day of March, 1861, the within summons came into my hands.

L. SUMMERS, *U. S. Marshal,*
By J. Y. ANTHONY, *Dept.*

And on the 8th day of March, 1861, I appointed Andrew Brown my special dep'ty to serve said summons as commanded.

J. Y. ANTHONY,
U. S. Dep't. Marshal for Dist. of Iowa, Southern Division.

And on the 9th day of March, 1861, I served the said summons by reading it to Thomas French, as mayor of the city of Burlington, Iowa, personally, and gave him a copy of the same, as demanded by him. No copy of petition demanded.

And on the 9th day of March, 1861, I served the within summons on D. J. Sales, as the recorder of the city of Burlington, Iowa, by reading it to him personally. No copy of summons or petition demanded by him.

ANDREW BROWN, *Special Dep'ty.*

Sworn to before me and subscribed this 12th day of March, A. D. 1861.

J. C. BURNS, *Clerk,*
By A. T. WALLING, *Deputy.*

Which writ is endorsed: Filed March 12, 1861.

5 And on the same 8th day of March, A. D. 1861, was filed the following petition, to wit:

District court of the United States for the district of Iowa, southern division.

ELIZUR MITCHELL AND WM. B. GLOVER
v.
THE CITY OF BURLINGTON.

DISTRICT OF IOWA, *Southern division, ss:*

Elizur Mitchell and William B. Glover, who are citizens of the State of Connecticut, plaintiffs in this suit, complain of the city of Burlington, which is a body corporate in, and a citizen of, the State of Iowa, defendant in this suit, in a plea of debt, for that the said city of Burlington, on the 23d day of March, 1850, at the city of Burlington, in said Iowa, made and executed its certain bond or writing obligatory, bearing date the day and year
6 last aforesaid, whereby it promised to pay ten years after date, for value received, at the Philadelphia Bank, in the State of Pennsylvania, to E. W. Clark, Brother & Co., or bearer, without defalcation, the sum of one thousand dollars, with interest on the same at ten per cent. per annum, payable annually for the last two years, and semi-annually thereafter, at the same places, as will more fully appear by a copy of said bond numbered "No. 5," marked "Exhibit A," annexed hereto and made a part of this declaration; which said bond was duly delivered to the said plaintiffs before due, who aver that they are now the lawful owners, and holders of the same, and entitled to the amount due on the same from the defendant.

And the plaintiffs aver that the time for the payment of the said bond has elapsed, and that the defendant became and is liable to pay the amount thereof, according to the tenor and effect of the said bond; yet, although often requested so to do, the defendant has not yet paid the said one
7 thousand dollars, nor any part thereof, to the said plaintiffs, to their damage two thousand dollars.

And also for that the said defendant heretofore, to wit, on the 23d day of March, 1850, at Burlington, in said Iowa, by its certain other writing obligatory, made and executed as aforesaid, promised to pay, ten years after the date, for value received, at the Philadelphia Bank, in the State of Pennsylvania, to E. W. Clark, Brother & Co., or bearer, without defalcation, the sum of one thousand dollars, with interest on the same at ten per cent. per annum, payable annually for the first ten years, and semi-annually thereafter, at the same place, as will more fully appear by a copy of said bond numbered "6," marked "Exhibit B," annexed hereto, and made part of this declaration; which said bond was duly delivered to the said plaintiffs before due, and they are now the lawful owners and holders of the same, and are entitled to the amount due on the same from the defendant.

And the plaintiffs aver that the time for the payment of the said bond
8 has elapsed, and that the defendant became and is liable to pay the amount thereof according to the tenor or effect of the said bonds; yet,

although often requested so to do, the defendant has not yet paid the said one thousand dollars, nor any part thereof, to the said plaintiffs, to their damage five thousand dollars.

And also for that the said defendant heretofore, to wit, on the 23d day of March, 1850, at Burlington, in said Iowa, by its certain other writing obligatory made and executed as aforesaid, promised to pay, ten years after date, for value received, at the Philadelphia Bank, in the State of Pennsylvania, to E. W. Clark, Brother & Co., or bearer, without defalcation, the sum of one thousand dollars, with interest on the same at ten per cent. per annum, payable annually for the first two years and semi-annually thereafter, at the same place, as will now fully appear by a copy of said bond, numbered "7," marked Exhibit "C," annexed hereto and made part of this declara-
9 tion; which said bond was duly delivered to the said plaintiffs before due, and they are now the lawful owners and holders of the same, and entitled to the amount due thereon from the defendant. And the plaintiffs aver that the time for the payment of the said bond has elapsed, and that the defendant became and is liable to pay the amount thereof according to the tenor and effect of the said bond; yet, though often requested so to do, the defendant has not yet paid the said one thousand dollars, nor any part thereof, to the said plaintiffs, to their damage five thousand dollars.

And also for that the said defendant heretofore, to wit, on the 23d day of March, A. D. 1850, at Burlington, in said Iowa, by its certain other writing obligatory, made and executed as aforesaid, promised to pay, ten years after date, for value received, at the Philadelphia Bank, in the State of Pennsylvania, to E. W. Clark, Brother & Co., or bearer, without defalcation, the sum of one thousand dollars, with interest on the same at ten per cent. per annum, payable annually for the first two years and semi-annually
10 thereafter, at the same place, as will more fully appear by a copy of said bond, numbered "9," marked "Exhibit D," annexed hereto, and made part of this declaration; which said bond was duly delivered to the plaintiffs before due, and they are now the lawful owners and holders of the same, and entitled to the amount due on the same from the defendant. And the plaintiffs aver that the time for the payment of the said bond has elapsed, and that the defendant became and is liable to pay the amount thereof according to the tenor and effect of the said bond; yet, although often requested so to do, the defendant has not yet paid the said one thousand dollars, nor any part thereof, to the plaintiff, to their damage five thousand dollars.

And also for that the said defendant heretofore, to wit, on the twenty-third day of March, A. D. 1850, at Burlington, in said Iowa, by its certain other writing obligatory, made and executed as aforesaid, promised to pay, ten years after date, for value received, at the Philadelphia Bank, in
11 the State of Pennsylvania, to E. W. Clark, Brother & Co., or bearer, without defalcation, the sum of one thousand dollars, with interest on the same at ten per cent. per annum, payable annually for the first two years and semi-annually thereafter, at the same place, as will more fully appear by a copy of said bond, numbered "10," marked "Exhibit E," annexed hereto and made part of this declaration, which said bond was duly delivered to the plaintiffs before due, and they aver that they are the lawful owners and holders of the same, and entitled to the amount due on the same from the defendant. And plaintiffs aver that the time for the payment of the said bond has elapsed, and that the defendant became and is liable to pay the amount thereof according to the tenor and effect of the said bond; yet, although often requested so to do, the defendant has not yet paid the said one thousand dollars nor said several sums of money, nor any part thereof, nor any

one of the said bonds above referred to, nor any part of the same, to
12 the damage of the plaintiffs five thousand dollars.

And thereupon they bring this suit and ask judgment for five thousand dollars debt and five thousand dollars damages.

JAMES GRANT, *Plaintiffs' Att'y.*

13 "EXHIBIT A."—*Copy of bond.*

City of Burlington, Iowa. Bond No. 5, issued by the city of Burlington under an ordinance passed Feb'y 25, A. D. 1860.—Plank-road loan.

Ten years after date the city of Burlington, State of Iowa, promises to pay to E. W. Clark, Brother & Co., or bearer, at the Philadelphia Bank, Pennsylvania, one thousand dollars, for value received, without defalcation, with interest on the same at 10 per cent. per annum, payable annually for the two first years and semi-annually thereafter, at the same place; that is to say, one hundred dollars on the twenty-third day of March, A. D. 1851, and a like sum on the twenty-third day of March, A. D. 1852, and fifty dollars on the twenty-third day of September, A. D. 1852, and a like sum semi-annually thereafter in each year, upon presentation of the coupons
14 severally hereto annexed, until the payment is well and truly made of the said sum of one thousand dollars.

In witness whereof, and in pursuance of an ordinance of said city, entitled "An ordinance to provide for procuring and investing the loan of $10, 000 to the city, to be invested in the stock of the Burlington and Mount Pleasant Plank-road Company, and for other purposes," the mayor of said city hereto sets his hand, and causes the corporate seal of said city to be affixed and the recorder of said city to countersign the same, at the city aforesaid, this twenty-third day of March, A. D. eighteen hundred and fifty.

[SEAL.] HENRY W. STARR, *Mayor.*

J. F. STEPHENS, *Recorder.*

15 EXHIBIT "B."—*Copy of bond.*

City of Burlington, Iowa. Bond No. 1, issued by the city of Burlington under an ordinance passed Feb. 25th, A. D. 1850.—Plank-road loan.

Ten years after date the city of Burlington, State of Iowa, promises to pay to E. W. Clark, Brothers & Co., or bearer, at the Philadelphia Bank, Pennsylvania, one thousand dollars, for value received, without defalcation, with interest on the same at ten per cent. per annum, payable annually for the two first years and semi-annually thereafter, at the same place; that is to say, one hundred dollars on the twenty-third day of March, A. D. 1851, and a like sum on the twenty-third day of March, A. D. 1852, and fifty dollars on the twenty-third day of September, A. D. 1852, and a like sum semi-annually thereafter in each year, upon presentation of the coupons severally hereto annexed, until the payment is well and truly made of the said
16 sum of one thousand dollars.

In witness whereof, and in pursuance of an ordinance of said city, entitled "An ordinance to provide for procuring and investing the loan of $10,000 to the city, to be invested in the stock of the Burlington and Mount Pleasant Plank-road Company, and for other purposes," the mayor of said city hereto sets his hand, and causes the corporate seal of said city to be affixed and the recorder of said city to countersign the same, at the city aforesaid, this twenty-third day of March, A. D. eighteen hundred and fifty.

[SEAL.] HENRY W. STARR, *Mayor.*

J. F. STEPHENS, *Recorder.*

17 EXHIBIT "C."—*Copy of bond.*

City of Burlington, Iowa. Bond No. 7, issued by the city of Burlington under an ordinance passed Feb. 25th, A. D. 1850.—Plank-road loan.

Ten years after date the city of Burlington, State of Iowa, promises to pay to E. W. Clark, Brothers & Co., or bearer, at the Philadelphia Bank, Pennsylvania, one thousand dollars, for value received, without defalcation, with interest on the same at ten per cent. per annum, payable annually for the first two years and semi-annually thereafter, at the same place; that is to say, one hundred dollars on the twenty-third day of March, A. D. 1851, and a like sum on the twenty-third day of March, A. D. 1852, and fifty dollars on the twenty-third day of September, A. D. 1852, and a like sum semi-annually thereafter in each year, upon presentation of the coupons severally hereto annexed, until the payment is well and truly made of the said
18 sum of one thousand dollars.

In witness whereof, and in pursuance of an ordinance of said city, entitled "An ordinance to provide for procuring and investing the loan of $10,000 to the city, to be invested in the stock of the Burlington and Mount Pleasant Plank-road Company, and for other purposes," the mayor of said city hereto sets his hand, and causes the corporate seal of said city to be affixed and the recorder of said city to countersign the same, at the city aforesaid, this twenty-third day of March, A. D. eighteen hundred and fifty.

[SEAL.] HENRY W. STARR, *Mayor.*

J. F. STEPHENS, *Recorder.*

19 EXHIBIT "D."

City of Burlington, Iowa. Bond No. 9, issued by the city of Burlington under an ordinance passed Feb. 25th, A. D. 1850.—Plank-road loan.

Ten years after date the city of Burlington, State of Iowa, promises to pay to E. W. Clark, Brothers & Co., or bearer, at the Philadelphia Bank, Pennsylvania, one thousand dollars, for value received, without defalcation, with interest on the same at ten per cent. per annum, payable annually for the two first years and semi-annually thereafter, at the same place; that is to say, one hundred dollars on the twenty-third day of March, A. D. 1851, and a like sum on the twenty-third day of March, A. D. 1852, and fifty dollars on the twenty-third day of September, A. D. 1852, and a like sum semi-annually thereafter in each year, upon presentation of the coupons severally hereto annexed, until the payment is well and truly made of the said sum of one thousand dollars.

20 In witness whereof, and in pursuance of an ordinance of said city, entitled "An ordinance to provide for procuring and investing the loan of $10,000 to the city, to be invested in the stocks of the Burlington and Mount Pleasant Plank-road Company, and for other purposes," the mayor of said city hereto sets his hand, and causes the corporate seal of said city to be affixed and the recorder of said city to countersign the same, at the city aforesaid, this twenty-third day of March, A. D. eighteen hundred and fifty.

[SEAL.] HENRY W. STARR, *Mayor.*

J. F. STEPHENS, *Recorder.*

21 EXHIBIT "E."

City of Burlington, Iowa. Bond No. 10, issued by the city of Burlington under an ordinance passed Feb. 25th, A. D. 1850.—Plank-road loan.

Ten years after date the city of Burlington, State of Iowa, promises to

pay to E. W. Clark, Brothers & Co., or bearer, at the Philadelphia Bank, Pennsylvania, one thousand dollars, for value received, without defalcation, with interest on the same at ten per cent. per annum, payable annually for the two first years and semi-annually thereafter, at the same place; that is to say, one hundred dollars on the twenty-third day of March, A. D. 1851, and a like sum on the twenty-third day of March, A. D. 1852, and fifty dollars on the twenty-third day of September, A. D. 1852, and a like sum semi-annually thereafter in each year, upon presentation of the coupons severally hereto annexed, until the payment is well and truly made of the said sum of one thousand dollars.

22 In witness whereof, and in pursuance of an ordinance of said city, entitled "An ordinance to provide for procuring and investing the loan of $10,000 to the city, to be invested in the stock of the Burlington and Mount Pleasant Plank-road Company, and for other purposes," the mayor of the said city hereto set his hand, and caused the corporate seal of the said city to be affixed, and the recorder of said city to countersign the same, at the city aforesaid this twenty-third day of March, A. D. eighteen hundred and fifty.

[SEAL.] HENRY W. STARR, *Mayor.*

J. F. STEPHENS, *Recorder.*

Endorsed: Filed March 8, 1861.

23 *Amended count.*

U. S. D. C. for Iowa, southern division.

MITCHELL & GLOVER v. CITY OF BURLINGTON. } Amended count.

And also for that on the 1st day of January, 1855, the said city of Burlington borrowed of the plaintiff the sum of ten thousand dollars, to be paid to plaintiff on request. And the plaintiff paid for the defendant a like sum at its request, to be paid by the defendant to the plaintiff when requested. And the defendant had, and received a like sum for the plaintiff's use, to be paid to them on request. Which said several sums are wholly unpaid by the defendant; whereby an action has accrued to the plaintiffs to have and demand said sum of ten thousand dollars, to their damage of ten thousand dollars, and therefore they sue.

J. GRANT, *for Pl'ffs.*

Endorsed: Filed Nov. 5, 1861.

24 And be it remembered, that afterward, on the 25th day of March, A. D. 1861, the following answer was filed in the above-entitled cause, to wit:

Answer.

ELIZUR MITCHELL AND WM. B. GLOVER v. THE CITY OF BURLINGTON. } No. 59.

District court of the United States, March term, 1861.

The city of Burlington, defendant, by Hall, Harrington & Hall, their attorneys, comes and defends this action, and for answer say that said defendant, the city of Burlington, is and was at the time of the execution of said bonds in pl'ffs' petition set forth, to wit, the twenty-third day of March, 1850, a mu-

nicipal corporation created by the laws of Iowa. That said corporation was created by a special act of the legislature of the Territory of Iowa, approved June 10th, 1845, entitled "An act to incorporate and establish the city of Burlington, and for revising and repealing all laws and parts heretofore enacted on that subject." That said city was situate in Des Moines
25 County, and as a limited district, and its boundaries specificially fixed and defined, as by the first section of said act of incorporation will appear. That said charter was amended by an act approved February 22d, 1847; also by an act approved January 22d, 1848; also by an act approved December 27th, 1848; also by an act approved February 4th, 1851; also by an act approved January 22d, 1853; also by an act approved January 17th, 1855; copies of all which acts and laws are herewith attached, and made a part of this answer, the same as if here inserted.

This defendant admits that Henry W. Starr was acting mayor of said city, and that James F. Stephens was the acting recorder of said city on the 23d of March, 1850, and that they as such officers executed said bonds in the plaintiffs' petition mentioned, and for a consideration delivered the same to E. W. Clark, Brothers & Co.

And defendant, further answering, states that said bonds were executed and delivered to said E. W. Clark, Brothers & Co. for the purpose of procuring money to invest in the stock of the Burlington and Mount Pleas-
26 ant Plank-road Company, which was a private corporation created for pecuniary profit, under the laws of Iowa, and incorporated for the object and purpose of constructing and building a plank-road from the city of Burlington, in Des Moines County, to the town of Mount Pleasant in Henry County, a distance of about twenty-eight miles. That the said E. W. Clark, Brothers & Co., well knew that the proceeds of said bonds were to be used to aid in the construction of said plank-road by subscribing stock in said corporation, and that they purchased said bonds and loaned the money, knowing that the avails of said bonds were to be so used. And defendants aver that no part of said road was within the boundaries of the city of Burlington, and that the proceeds of said bonds were used and paid for stock in said Plank-road Company. And defendants aver that the said Henry W. Starr, mayor, and the said J. F. Stephens, recorder of said city, had no authority or power to execute said bonds, or borrow money, or subscribe stock in said
27 Plank-road Company, and that the said city of Burlington is not, nor was, liable to pay or in any manner bound by said acts of said mayor and recorder, and that said bonds, as against the def't are void; wherefore they pray that, &c.

HALL, HARRINGTON & HALL, *for Def't.*

Endorsed: Filed March 25, 1861.

28 *Burlington City charter.*

An act to incorporate and establish the city of Burlington, and for revising and repealing all laws and parts of laws heretofore enacted on that subject.

CONTENTS.

SECTION 1. Boundaries described, and contents declared a city. Inhabitants a body politic; name, city of Burlington; all corporate powers.

2d. City invested with all powers, property, &c., as heretofore held; no suit at law to abate by the change.

3d. Mayor to be elected annually 1st Monday February; he must be a resident three years; each ward to elect two aldermen, residents of two years; mayor and aldermen to constitute the city council; majority a quorum; coun-

cil to be judges of election returns and qualifications of their members; may compel members to attend under penalty; aldermen's term, one year; shall elect pro tem. president.

4th. People to elect treasurer annually, he to exercise lawful powers not specified herein; city marshal to be annually elected, and perform
28½ duties not specified herein; recorder to be annually elected, to keep record of, and duties required by council.

5th. Mayor to give ten days' notice of election by proclamation; election from 8 or 10 a. m. to 4 p. m.; returns to be made to the mayor within two days, except those for mayor, which go to the president pro tem.; mayor and pro tem. president to open returns; persons having most votes elected; if no choice, mayor to order new election; persons elected to be notified by the marshal, and qualified in ten days or office be vacant; council to appoint judges and clerks of election.

6th. Inhabitants 21 years of age to vote; suspected or challenged vote to be sworn.

7th. Councilman not to accept any city office, nor be interested in any contract during his term.

8th. Mayor to put in force the laws, to sign all laws, &c., have them published; preside in council and have a casting vote.

9th. Officers to take oath and give bond when required.

10th. Council to provide places for meeting open to the public.

11th. Council to fill vacancies; president pro tem. to act in mayor's absence.

29 12th. Council to publish ordinances, to punish offences against inhabitants; if contrary to law of Territory void.

13th. Council to organize fire companies and provide apparatus; to construct landings, fix wharfage, &c.

14th. On application of three fourths of owners *of owners* on any square, council to prescribe manner of building.

15th. Council to regulate all taverns, exhibitions, &c., &c., to grant licenses to the same; to revoke licenses if necessary; existing ferries not to be disturbed.

16th. Council to remove all nuisances; proprietors to fill up lands occasionally overflowed; they failing, council to do so, and assess cost on lot; cost to be collected by sale of lot if necessary; proprietors may redeem in one year.

17th. Council to appoint supervisors, &c., and collect one dollar from each liable person as road tax; may prohibit animals from running at large; may license carts, &c., and livery stables, brokers, and law offices.

18th. Money to be placed in treasury, and not paid except by order of the council.

19th. Before laws of council are binding they must be approved and published.

20th. Defines the meaning of the term "owner."

29½ 21st. Council to regulate grades.

22d. Justices to issue process for corporation; try offenders; may summon jury; convicted persons liable for costs—if cleared, corporation to pay; may commit to Des Moines County jail.

23d. No person to be deprived of liberty, or fined more than $20, unless tried by jury.

24th. Council to have charge of all property, but cannot sell without people's consent.

25th. Council to levy taxes on city property not to exceed one quarter per cent.; may tax dogs, &c., open streets, and tax for cost of the same.

26th. All north of Columbia street to be Ward No. 1; south thereof and north of Jefferson, Ward No. 2; south thereof, Ward No. 3; council may alter boundaries, or add other wards.

27th. Council may borrow money if two thirds of the citizens agree.

28th. Charter to be submitted to people for adoption.

29th. Charter declared a public act.

30 SECTION 1. *Be it enacted by the council and house of representatives of the Territory of Iowa,* That all that part of the Territory included in the following defined limits, to wit: Beginning on the west bank of the Mississippi River, in the county of Des Moines, at a point where the southern boundary line of the official survey of the town of Burlington, made by authority of the United States, strikes said river; thence with the said southern boundary line to the southwestern corner of said survey; thence with the western boundary of said survey to the northwestern corner of said survey; thence with the northwestern boundary line of said survey to where the same strikes the Mississippi River; thence due east to the middle of the main channel of said river; thence down the middle of the main channel thereof to a point in said main channel due east from the place of beginning; and thence due west to the place of beginning, shall be, and hereby is, declared to be a city, and the inhabitants thereof are created a body corporate and politic, with perpetual succession, by the name and style of the city of Burlington; and as
31 such, by that name, shall be capable in law of contracting and being contracted with, of suing and being sued, of pleading and being impleaded, answering and being answered unto, in all courts and places and in all matters whatsoever; and also of purchasing, using, occupying, enjoying, and conveying real, personal, and mixed estate, and may have and use a corporate seal, and change, alter, and renew the same at pleasure, and shall be competent to have, exercise, and enjoy all the rights, immunities, powers, and privileges, and be subject to all the duties and obligations incumbent upon and appertaining to a municipal corporation. And for the better ordering and governing said city the exercise of the corporate powers of the same, hereby and herein granted, and the administration of its fiscal, prudential, and municipal concerns with the conduct, direction, and government thereof, shall be vested in a mayor and board of aldermen, consisting of two members from each ward, to be denominated the city council, together with such other officers as are hereinafter mentioned and provided for.

32 SEC. 2. That the said city of Burlington shall be, and hereby is, invested as the lawful owner and proprietor, with all the real, personal, and mixed estates, and all the rights and privileges thereof, together with all the property, funds, and revenues, and all moneys, debts, accounts, and demands due and owing or in anywise belonging to said city, or which by or under the authority of any former act or acts have been acquired, vested in, or is or may be owing or belonging to the city of Burlington, and the same are hereby transferred to the corporate body created and established by this act; and all suits pending and judgments recovered by, in favor of, or against said city of Burlington, together with all rights, interests, claims, and demands in favor of or against said city of Burlington, together with all rights, interest, claims, and demands in favor of and against the same, may be continued, prosecuted, defended, and collected in the same manner as though this act had never been passed.

SEC. 3. That the qualified electors of said city, on the first Monday of February, annually, elect a mayor who shall have resided in said
33 city three years; and the qualified electors of each ward in said city shall at the same time elect two aldermen, who shall have resided in

said city two years, and shall be residents and inhabitants of the ward in which they shall be elected, and the mayor and aldermen so elected, when assembled together and duly organized, shall constitute the city council, a majority of the whole number of whom shall be necessary to constitute a quorum for the transaction of business; they shall be judges of the election returns and qualifications of their own members, and shall continue in office for the term of one year, and until their successors shall be chosen and qualified. They shall determine the rules of their proceedings and keep a journal thereof, which shall be open to the inspection and examination of every citizen, and may compel the attendance of absent members in such manner and under such penalties as they shall think fit to prescribe. And they shall meet in some convenient place in said city on the second
34 Monday of February, and after taking the oath of office before some officer qualified to administer oaths, they shall elect from their own body a president pro tempore.

SEC. 4. That there shall be elected by the qualified voters of said city, on the first Monday of February, annually, a treasurer, who shall hold his office for the term of one year and until his successor is elected and qualified; he shall perform such duties and exercise such powers not herein and by this act specified, as may be lawfully required of him by the ordinances of said city. There shall also be elected by the qualified voters of said city, on the first Monday of February, annually, a city recorder, who shall hold his office for one year and until his successors are elected and qualified, whose duty it shall be to keep a regular and correct journal of the proceedings of the council, and perform such other duties as may be lawfully required of him by the ordinances of said city.

SEC. 5. That in all elections for city officers it shall be the duty of the mayor to issue a proclamation to the qualified voters of said city, or
35 to those of the respective wards, as the case may require, setting forth the time of such elections, the place or places where the same shall be held, the officer or officers to be chosen, and cause such proclamation to be posted up in three of the most public places in said city at least ten days previous to such election. And every such election shall be opened between the hours of eight and ten o'clock in the forenoon, and continue open until four o'clock in the afternoon, and shall in all things be conducted agreeably to the laws regulating township elections for the time being; and it shall be the the duty of the judges of said elections, in the several wards, within two days thereafter, to make and direct the returns thereof to the mayor of the said city, at his office, in the same manner that election returns are required to be made by the township trustees for the time being. *Provided*, That in all elections for mayor the returns thereof shall be made and directed to the president pro tempore of the city council. And the mayor [or] and president of the city council, as the case may be, shall within five days after any such election, open the returns which have been made to him as aforesaid, and shall make an abstract of all the votes
36 and file the same with the city recorder, who shall make a record thereof in a book to be kept by him for that purpose; and the person or persons having the highest number of votes shall be declared duly elected, but if from any cause the qualified voters of said city, or of any of the respective wards, as the case may be, should fail to effect an election at the time and in the manner herein provided, the mayor shall forthwith issue his proclamation for a second or other election, which in all things shall be notified, conducted, regulated, and the returns thereof made, as in and by this act is prescribed; and the person or persons who shall be chosen at any such second or other election shall hold his or their office until the next stated period for the choice of a successor or successors. And it shall be the duty

of the mayor or president pro tempore of the city council immediately to notify such person or persons as may be elected as aforesaid of his or their election, by causing a written notice thereof to be served upon him or them by the city marshal. And every person so chosen or elected as aforesaid shall, within ten days after his election, cause himself to be qualified to enter upon the duties of his office, and in default thereof, the office to which he shall have been elected shall be deemed and considered in law vacant. And it shall be the duty of the city council to prescribe the time and manner and provide the place or places for holding all elections in said city, for city officers, and of making the returns thereof, not herein otherwise directed and prescribed. And the said city council shall appoint judges and clerks for all city elections.

SEC. 6. That each and every white male inhabitant above the age of twenty-one years, who shall have been a resident in said city six months immediately preceding any election for the election of city officers, shall be deemed a qualified voter of said city, and shall be entitled to vote in the ward in which he resides, for mayor, aldermen, treasurer, and such other officer and officers as are in and by this act directed to be chosen by the qualified voters of said city, or of the respective wards therein, and all others which by public ordinance may be required to be chosen or elected. And when any person shall present himself to give his vote, and either of the judges shall suspect that such person does not possess the requisite qualifications of an elector, or if his vote shall be challenged by any elector who has previously given his vote at *at* such election, the judges of such election shall tender to such person an oath or affirmation in the following form, to wit: I (A B) do solemnly swear (or affirm, as the case may be,) that I have been a resident of this city six months immediately preceding this election; am a resident of this ward, and to the best of my knowledge and belief, have attained the age of twenty-one years, and that I have not voted at this election.

SEC. 7. That no member of the city council shall be eligible to any office within the gift of the city council during the year for which he may have been elected; nor shall any member of the city council be interested, directly or indirectly, in the profit of any contract or job of work or services to be performed for this city.

SEC. 8. That it shall be the duty of the mayor to be vigilant and active at all times; in causes the laws and ordinances of said city to be put in force, and duly executed. He shall keep the seal of said city, and all of the records, papers, and official documents thereunto belonging. He shall sign all by-laws and ordinances adopted and passed by the city council, and see that the same are published at least six days before they go into effect. He shall preside when present at the meetings of the city council, and be denominated president of the same, and when there is a tie, shall give the casting vote. He shall do and perform such other duties as the city council may prescribe and determine, not inconsistent with the provisions of this charter and the dignity of his office.

SEC. 9. That the treasurer, marshal, recorder, and all other officers under the government of said city shall, before entering upon the duties of their respective offices, take an oath or affirmation to support the constitution of the United States and the organic law of this Territory, and faithfully and impartially to perform the several duties of the offices to which they may be respectively elected or appointed, and when required shall give such bond to the city, with good and sufficient surety, in such sum or sums and with such condition thereto as the city council may from time to time direct; and in all cases not hereinbefore provided for shall, respectively, be allowed and receive such fees and compensation for their

services, and be liable to such fines, penalties, and forfeitures for negligence, carelessness, and misconduct in office, and positive violation of duty as the said city council shall order and determine.

Sec. 10. That the city council shall provide the times and places of holding their meeting not herein otherwise provided for, which shall at all times be open for the public; they shall provide by ordinance for the election, by the qualified voters of said city of such other city officers, whose election is not herein otherwise provided for, as shall be necessary for the good government of *of* said city, and the due exercise of its corporate powers, and which shall have been provided for by ordinance, and all city officers whose term of service is not prescribed, and whose powers and duties are not defined in and by this act, shall perform such duties and exercise such powers, and continue in office for such term of time, not exceeding one year,
41 as shall be prescribed by ordinance.

Sec. 11. That whenever the office of mayor, councilman, treasurer, marshal, recorder, or other officer in and by this act specified or provided for, shall become vacant by death, resignation, or removal from the city or otherwise, it shall be the duty of the council, as soon as may be, to appoint some suitable person, having the requisite qualifications to fill such vacancy, and the person so appointed shall continue in office during the remainder of the term for which his predecessor was elected or appointed, and in case of sickness or temporary absence of the mayor, the duties of his office during his sickness or temporary absence, shall be discharged by the president pro tem., who shall be obeyed and respected accordingly.

Sec. 12. That the said city council shall have power, and it is hereby made their duty, to make and publish from time to time all such ordinances as shall be necessary to secure said city and the inhabitants thereof against injuries by fire, thieves, robbers, burglaries, and all other persons violating the public peaces, for the suppression of riots and gambling, and in-
42 decent and disorderly conduct; for the punishment of all leud and lascivious behaviour in the streets and other public places of said city. They shall have power from time to time to make and publish all such laws and ordinances, as to them shall seem necessary to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of said city and the inhabitants thereof; to impose fines, forfeitures, and penalties on all persons offending against the laws and ordinance of said city, and provide for the prosecution, recovery, and collection thereof, and shall have power to regulate by ordinance the keeping and sale of gunpowder within the city, provided, that all laws or ordinances passed by said city council, conflicting in anywise with the statute laws of this Territory, shall be null and void and of no effect.

Sec. 13. That the said city council shall have power to establish and organize all fire companies, and provide them with proper engines, and such other instruments as shall be necessary to extinguish fire and preserve the
43 property of the inhabitants of said city from conflagration, and they shall have power to establish, construct landing places, wharves, docks, and basins in said city, at or on any of the city property, and fix the rate of landing, wharfage, and dockage of all steamboats, boats, rafts, and other water-crafts, and of all goods, wares, merchandize, produce, and other articles that may be moored at, landed on, or taken from any landing, wharf, dock, or basin belonging to said city.

Sec. 14. That for the purpose of more effectually securing said city from the destructive ravages of fire, the said city council shall have power and authority, and for such purpose they are hereby empowered and authorized, on the application of three fourths of the whole number of owners or proprietors of any square or fractional square in said city, to prohibit, in the most

effectual manner, the erection of any building, or the addition to any building before erected more than ten feet high, in any such square or fractional square, except the outer walls thereof should be composed entirely of brick, or stone, or mortar, and to provide for the most prompt removal of any building or addition to any building which may be erected contrary to the true intent and meaning of this section.

SEC. 15. That the city council shall have power, and it is hereby made their duty, to regulate, by good and wholesome laws and ordinances for that purpose, ale and porter shops and houses and places of significant and habitual resort for tippling and intemperance, where spirituous liquors are sold or used by less quantity than a quart, and all other houses of public entertainment in said city; all theatrical exhibitions and public shows, and all exhibitions of whatever name or nature to which admission is obtained on the payment of money or any other reward, and all ferries across the Mississippi River from said city to the opposite shore, and to impose reasonable fine and penalties for the violation of any such laws and ordinances. And the said city council shall have full and exclusive power to grant or refuse license to tavern-keepers inn-holders, (retailers of spirituous liquors of less quantity than a quart, keepers of ale and porter houses and shops,) and all other houses of public entertainment, showmen, keepers and managers of theatrical exhibitions and other exhibitions for money or other reward, auctioneers for the sale of horses or other domestic animals at public auction in the streets, lanes, alleys, and commons of said city, and keepers of ferries from said city across the Mississippi to the opposite shore; and in granting any such license it shall be lawful for said city council to exact, demand, and receive such sum or sums of money as they shall think fit and expedient; to annex thereto such reasonable terms and conditions in regard to time and place and other circumstances under which such license shall be acted upon as in their opinion the peace, quiet, and good order of society and said city may require, and for the violation of such reasonable terms and conditions as aforesaid the city council shall have power to revoke or suspend any such license whenever the good order and welfare of said city may require it, in such manner as shall be provided for by ordinance. *Provided*, That no power herein granted to the said city council shall be so construed as to impair, interfere with, or in any manner affect any right or rights now existing by virtue of any acts heretofore passed by the legislative authority of this Territory establishing ferries across the Mississippi River opposite the town of Burlington, Des Moines County.

SEC. 16. That the city council shall have power, and they are hereby authorized, to require and compel the abatement and removal of all nuisances within the limits of said city, under such regulations as shall be prescribed by ordinances; to cause all grounds therein where water shall at any time become stagnant, to be raised, filled up, or drained, and to cause all putrid substances, whether animal or vegetable, to be removed; and to effect these objects the said city council may, from time to time, give order to the proprietor or proprietors, or to his or their agents, and to the non-resident proprietors who have no agents therein, notice, by one or more of the newspapers printed in said city, for the period of two weeks, of all or any grounds subject at any time to be covered with stagnant waters, to fill up, raise, or drain such grounds at their own expense; and the said city council shall designate how high such grounds shall be filled up and raised, or in what manner they shall be drained, and fix some reasonable time for filling up, raising, or draining the same; and if such proprietor, or proprietors, or agents shall refuse or neglect to fill up, raise, or drain such grounds in such manner and within such time as the said city coun-

cil shall have designated and fixed, they shall cause the same to be done at the expense of the city and assess the amount of the expense thereof on the lot or lots of ground so filled up, raised, or drained, as aforesaid, and place the assessment so made as aforesaid in the hands of the city collector, who shall proceed to collect the same by sale of such lot or lots, if not otherwise paid, in such manner and under such restrictions and regulations as may be prescribed by ordinance; provided, the prourietor or proprietors shall have the privilege to redeem such lot or lots within one year after such sale, by paying to the purcheser or purchasers the amount by them paid, to-
48 gether with ten per cent. interest on the same.

Sec. 17. That said city council shall have the exclusive power of appointing supervisors and other officers of the streets and other highways within the said city, and of collecting in money or labor any sum not exceeding one dollar annually, as a road-tax, from each and every person liable by law to pay such tax, or to labor on the highways; they shall have the power, whenever the public convenience or safety shall require it, to prohibit dogs, cattle, horses, and other description of animals from running at large in the streets, lanes, alleys, commons, and other public places in said city; they shall have power to license and regulate all carts, wagons, and drays, and every description of two and four wheeled carriages which may be kept in said city for hire, and all livery stables, brokers' and loan offices.

Sec. 18. That all moneys raised, recovered, received, or collected by means of any tax, license, penalty, fines, forfeitures, or otherwise, under the authority of this act, or which may belong to said city, shall be paid into
49 the city treasury, and shall not be drawn therefrom except by order or authority of the city council; and it shall be the duty of the city council to liquidate and settle all claims and demands against said city, and to require all officers, agents, or other persons intrusted with the disbursement or expenditure of the public money, to account to them therefor at such time and in such manner as they may direct; and they shall annually publish, for the information of the citizens, a particular statement of the receipts and expenditures of all public moneys belonging to said city, and also of all debts due and owing to and from the same; and the said city council shall have power to pass such laws and ordinances as may be necessary and proper to carry into effect the powers herein and by this act granted.

Sec. 19. That every law or ordinance of said city, before it shall be of any force or validity, or in any manner binding on the inhabitants thereof or others, shall be signed by the mayor and published in one or more newspapers of said city at least six days.

Sec. 20. That for the purpose of opening or improving any street,
50 lane, alley, market-place, public landing, or common, or other purposes, the term "owner" or "owners" used in this act is hereby declared to mean any person or persons who may own any lease upon lands for any term not less than ninety-nine years, renewable forever, or any freehold estate, either for life or otherwise, upon any ground to be affected by petition; and such tax, shall be a lien upon the real estate upon which it may be assessed from the time of filing such petition until it shall be fully paid or satisfied.

Sec. 21. That said city council shall have exclusive power to establish and regulate the grades of the wharves, streets, and banks along the Mississippi River within the corporate limits of said city.

Sec. 22. That the justices of the peace in said city shall have full power and authority, and it is hereby made their duty, at such times as the same by the city authorities shall be required of them or any of them, to issue all

needful process for the apprehension of offenders against the by-laws,
51 ordinances, and regulations of said city, and to hold a court for the trial of all offenders against said city and the same to fine, imprison, or discharge as the by-laws, ordinances, and regulations of said city and the facts of the case may require, and for that purpose they and each of them are authorized and required to cause to come before them, when necessary, a jury of six citizens of said city, who shall be qualified voters of said city, and all such offenders, on conviction, shall be liable for the costs of prosecution, and judgment shall go accordingly, and in case of acquittal the same shall be paid by the corporation, having first been allowed by the city council. And all persons in behalf of said city shall sue in the name of the (United States for the use and benefit of) said city, and shall otherwise conform to the requisitions and provisions that may be made by the mayor and aldermen in common council, and shall be served, executed, and returned by the marshal of said city; and until other provisions be made by said city authorities it shall be lawful for said justices or any of them to commit all offenders against said by-laws, ordinances, and regulations, on convic-
52 tion, to the jail of Des Moines County; and in case where a portion or all the punishment shall be imprisonment, the keeper of said jail is hereby required to receive such persons on the proper warrant of such justice or justices of the peace into his custody in said jail, in the same manner as in ordinary cases. And all expenses of such imprisonment in cases where the same cannot be collected from the persons so convicted and imprisoned, shall be paid out of the treasury of the corporation; the fees of the justices and jurors in such cases shall be the same as are allowed by the statutes of this Territory.

Sec. 23. That all trials for the violation of the by-laws, ordinances, and regulations of said city shall be in a summary manner, and that no person shall, for any offence, be deprived of his or her liberty, or fined in any sum greater than twenty dollars, unless convicted by a jury of six citizens of said city qualified to vote as aforesaid.

Sec. 24. That the said city council shall have the custody, care, superintendance, management, and control of all real, personal, and mixed
53 estate and other corporate property belonging to said city, and all the real, personal, and mixed estate, money, funds, and revenues which, from time to time, may be owned by or of right belong to said city, with full power to purchase, hold, possess, use, and occupy, and to sell and convey the same for the use and benefit of said city and the inhabitants thereof. *Provided*, That the city council shall not have power to sell any real estate belonging to the said city of Burlington unless the qualified voters thereof, in pursuance of ten days' previous notice, given by order of the city council, published in two or more of the newspapers printed in said city, setting forth the time, place, and purpose of voting, shall, by a majority of written or printed ballots given, express their consent thereto.

Sec. 25. That to defray the current expenses of said city the city council shall have power to levy and collect taxes on the real and personal property therein, provided the amount of taxes levied shall not, in any one year, exceed twenty-five cents on each one hundred dollars' worth of property taxed. They shall also have power, whenever, in their opinion, the interest of
54 said city shall require it, to levy and collect taxes on dogs or other domestic animals, not included in the list of taxable property, for territorial and county purposes, whid said taxes shall be collected by the city collector and paid into the treasury in such a manner and under such restrictions and regulations as may be prescribed by ordinance. The city council shall have power to cause to be opened, paved, repaved, or improved, any street, lane, alley, market space, or public landing, on petition of not

less than two thirds of the number of owners of any square or part of a square of said city, bounding or abutting on such street, lane, alley, market-space, or public landing so to be opened, paved, repaved, or improved, and to levy and collect a special tax for defraying the costs and expenses of the same by an equal assessment on the feet front bounding and abutting as aforesaid.

SEC. 26. The said city shall be divided into wards, as follows, viz: All that part of the city north of Columbia street and abutting upon the same shall constitute one ward, and shall be known and designated as ward
55 number one; all that part of the city south of Columbia and north of Jefferson streets shall constitute one ward, and shall be known and designated as ward number two; and all that part of the city south of Jefferson street and abutting upon the same shall constitute one ward and be known and designated as ward number three, until such boundaries may be altered or the number of wards may be increased by the city council, who are hereby authorized and empowered to make alterations in the boundaries or to establish additional wards, as the public convenience may require.

SEC. 27. That whenever, in the opinion of the city council, it is expedient to borrow money for any public purposes the question shall be submitted to the citizens of Burlington; the nature and object of the loan shall be stated and a day fixed for the electors of the said city to express their wishes; the like notice shall be given as in cases of an election. The loan shall not be made unless two thirds of all the votes polled at such election shall be given in the affirmative.

SEC. 28. That before this act shall take effect and be in force a vote
56 shall be taken upon the adoption of the same by the qualified voters residing within the limits of said city, at such time and place, and under such regulations as the present mayor and aldermen of said city may prescribe and determine. *Provided*, That a majority of the whole vote cast shall be necessary to adopt and carry into effect this act. *Provided further*, That each and any person authorized to vote for city officers under the charter now in force in said city shall be entitled to vote for and against this charter.

SEC. 29. That this act shall be taken and received in all courts and by all judges, magistrates, and other public officers as a public act, and all printed copies of the same which shall be printed by or under the authority of the council and house of representatives shall be admitted as good evidence thereof without any other proof whatever.

SEC. 30. That the act entitled "An act to incorporate the city of Burlington," approved January 19th, 1838, and all other laws and parts of laws heretofore passed and coming within the purview of this act be, and the same are hereby, repealed.

Approved June 10th, 1845.

57 **An act to amend the charter of the city of Burlington.**

SEC. 1. *Be it enacted by the general assembly of the State of Iowa*, That the amount of tax to be levied upon real and personal estate by the mayor and aldermen of the city of Burlington after the taking effect of this act shall not exceed twelve and one half cents on every hundred dollars' worth of property to be assessed.

SEC. 2. Before this act shall take effect the qualified voters residing within the limits of said city shall vote for and against the provisions of this act, the vote upon which shall be put in this manner: "Are you in favor of or against the reduction of the tax?" If a majority of all the votes cast be in favor of a reduction then this act shall be in full force and effect; but not, otherwise.

SEC. 3. A poll shall be opened in said city at the usual places of holding elections therein, on the second Monday of April next, for a vote to be taken for or against the provisions of this act, of which said election said mayor and aldermen shall cause ten days' previous notice to be given,
58 and said election shall be conducted as other city elections.

SEC. 4. This act shall be published by one insertion in the State Gazette and Hawkeye, printed in the city of Burlington, at least three weeks before said election; said insertion to be paid for by said city.

Approved February 22d, 1847.

An act to amend the charter of the city of Burlington.

SEC. 1. *Be it enacted by the general assembly of the State of Iowa,* That the mayor of the city of Burlington shall be ex officio a justice of the peace to all intents and purposes, with jurisdiction limited to the city of Burlington in the same manner as that of other justices is limited to their respective townships.

SEC. 2. He shall be disqualified from trying any cause for the reason that it is brought in the name, or behalf of, or under the ordinances of said city.

SEC. 3. The mayor and aldermen of said city shall have power to change the streets, to discontinue old streets, to lay out new ones therein
59 whenever the public good may require the same; but whenever, for these purposes, private property shall be taken for public use full compensation shall be made to the owners thereof without setting off against such compensation the enhancement in value of the adjacent property.

SEC. 4. Whenever any portion of a street shall be discontinued the mayor and aldermen may dispose of the same for the benefit of the city.

SEC. 5. They shall also have power to sell all the accretions in front of said city after a majority of the votes given on that subject, at any city election, shall have been given in favor of such sale.

SEC. 6. All suits and prosecutions on city ordinances shall be brought in the corporate name of the city, but the process shall run in the name of the State, as provided in the constitution.

SEC. 7. No street or alley shall be changed, altered, or vacated, nor new ones laid out, until the consent of a majority of the property owners on the block adjoining to said street or through which said alley passes
60 shall be given in writing to that effect.

SEC. 8. This act shall take effect from and after its publication by one insertion in each of the newspapers published in the city of Burlington.

Approved January 22d, 1848.

An act to amend the charter of the city of Burlington.

SEC. 1. *Be it enacted by the general assembly of the State of Iowa,* That the mayor of said city of Burlington, before entering upon the discharge of his duties, shall within five days after receiving his certificate, enter into bond to the board of commissioners of the county of Des Moines, with two or more good sureties, to be by the clerk of the district court approved, in the sum of one thousand dollars, conditioned that he will faithfully pay over all moneys that may come into his hands by virtue of his office as mayor or justice of the peace, and in other respects discharge the duties of justice of the peace.

SEC. 2. *Be it further enacted,* That suit or suits may be instituted
61 against said justice and his sureties by any person aggrieved by a breach of said bond or other violation of his duty as justice of the peace, which said suits may be instituted before any courts having jurisdic-

tion of the amount of damage claimed or sum demanded, and judgment shall be rendered for so much as the party shall prove himself entitled to recover.

SEC. 3. This act to take effect from and after its passage.

Approved December 27th, 1848.

An act to amend the charter of the city of Burlington.

SEC. 1. *Be it enacted by the general assembly of the State of Iowa,* That the boundaries of the city of Burlington shall hereafter be as follows: Commencing in the middle of the channel of the Mississippi River at a point eighty rods due south of the line dividing sections four and nine,
62 township sixty-nine north, of range two west; thence west and parallel with the line dividing said sections, to the west line of section eight of same township; thence north, along the west line of sections eight and five of said township, and along the west line of section thirty-two of township seventy north, of range two west, for the distance of two and a quarter miles from the southwest corner of said boundary; thence east with the north line of said section thirty-two, to the middle of the main channel of the Mississippi River; thence down the middle of the main channel of said river to the place of beginning.

SEC. 2. The city council shall have no power, without the consent of the owners of two thirds of the property through which *through which* the right of way may be asked, to lay out through the tract of land thus brought within the city limits any streets or alleys which have not been previously laid out. Nor shall any land not laid out into town lots or out-lots be taxed otherwise than by the acre, and according to its value for agricultural or horticultural purposes, except that all improvements thereon may be taxed at their full value.

63 SEC. 3. That in making annual assessments of real estate in said city, for the purpose of collecting revenue, the city recorder shall be, and he is hereby, appointed ex officio assessor of real estate of said city, and it shall be, and is hereby, made his duty to have said assessment completed on or before the first Monday of June of each year hereafter. In making said annual assessment the said assessor and recorder shall take and subscribe an oath, before a justice of the peace, that he will faithfully and impartially assess all taxable property in the city, and that he will not fix a greater value on any property than its actual worth in cash; and he shall give such bond for the performance of his duties as the city council may deem necessary, and a copy of such bond and affidavit shall be preserved by the mayor.

SEC. 4. That said city is hereby constituted a special road district, and the city council shall have power, in addition to the amount of taxes heretofore authorized, to levy road taxes not exceeding the amount allowed to be levied by the county court, and they may provide for the collection
64 of such taxes, either in a similar manner to that pursued in relation to county road taxes, or in the manner in which other city taxes are collected; they may also provide for the manner in which all such taxes shall be expended on the streets of said city, and the avenues leading to the country; and all persons or property rightfully taxed in said city, in accordance with the provisions of this section, are, to that extent, exempted from all road taxes due to the county.

SEC. 5. The county supervisor of roads is not required to expend labor upon, nor exercise supervision over, the roads or streets in said city, but the duties and responsibilities imposed upon such supervisors generally shall, as to the roads and streets within the city limits, devolve upon the city

council, or upon such officer or officers as they may authorize to take charge of such work.

Sec. 6. That the city council shall have power, whenever they deem it expedient for the public interest of said city, to submit the question of levying and collecting an additional tax to that already authorized for defraying the current expenses of the city, provided the additional tax authorized
65 shall not be levied for a longer time than one year, and shall not in any one year exceed twelve and a half cents on each one hundred dollars' worth of property taxed; and if a majority of the legal voters shall, at any election at which such question is submitted, have voted an additional tax, such tax shall be collected as heretofore provided for the collection of city revenue.

Sec. 7. The regular election for mayor and other city officers shall be held on the first Monday in March, in the year 1851, and on the first Monday in February in each subsequent year.

Sec. 8. The additional territory which the city of Burlington has acquired by this act shall not, in any manner, be subject to any levy of taxes by the city council, except for road purposes, until after the first day of February, A. D. 1854.

Sec. 9. Each member of the city council of said city shall receive a compensation, to be fixed by ordinance, for his services, to be paid out of the city treasury. Such compensation shall not exceed one dollar per day,
66 nor shall any one member of said council receive a compensation to exceed fifty dollars in any one year.

Sec. 10. That the city council is hereby authorized to cause the channel, or any part thereof, of the creek running from the west boundary line of said city to the Mississippi River, usually known as Hawk Eye Creek, to be changed from its natural channel, as said city council may deem for the best interest of said city.

Sec. 11. That if said channel, or any part thereof, is changed from the natural channel, and shall be caused to run over the private property of individuals without their consent, said city shall be responsible for all damages sustained by such change, as follows: After any change from the natural channel shall have been adopted by the city council, notice thereof shall be given to all persons over whose property the new channel may run, and within twenty days from the service of such notice they may object to such change, and put in their claim for damages, stating the amount and describing the property injured, to be filed with the city recorder.

67 Sec. 12. That when any claim for damages shall be filed as aforesaid, the city council shall cause a copy thereof to be filed with some justice of the peace, or some person authorized to act as such, and a day of trial shall be fixed by such justice, and notice thereof to be given to such claimant or claimants. Such justice shall cause to be summoned nine persons, qualified to act as ordinary jurors, as between the parties, and who are not interested in a similar question.

Sec. 13. At the time appointed the parties, commencing with the council , or any member thereof, shall in turn proceed to strike off one juror each, until only three remain.

Sec. 14. The three jurors so selected must then proceed to examine the premises claimed to be injured, and shall hear evidence offered by either party.

Sec. 15. The jurors, when agreed, shall return their verdict to said justice, and such justice shall thereupon enter a judgment of condemnation, and, upon payment by the city of the damages so assessed by the jury to said justice, for the use of such claimant or claimants, the channel so located by the city council shall be established, and no further damages shall be
68 claimed.

Sec. 16. The city council shall have power to grade any of the streets, roads, and alleys of said city which have not already been graded, of which the city surveyor shall keep a true and accurate record, and to regrade the same whenever they deem it expedient.

Sec. 17. Whenever any owner of property feels aggrieved by such regrading, the damages shall be assessed and paid in the manner pointed out in this act in sections 11, 12, 13, 14, and 15.

Sec. 18. This act shall take effect and be in force from and after its publication in the Iowa State Gazette and Burlington Hawkeye, the expense of said publication, however, to be paid by said city of Burlington.

Approved February 4th, 1851.

Note—Published in the Iowa State Gazette Feb. 12th, and Burlington Hawkeye Feb. 14, 1851.

69 An act to amend the charter of the city of Burlington.

Sec. 1. *Be it enacted by the general assembly of the State of Iowa*, That, to defray the current expenses of said city, the city council shall have power to levy and collect taxes on all the real and personal property in said city not exempted by the general law from taxation. *Provided*, That the amount of taxes levied for said purpose shall not, in any one year, exceed one dollar on each one hundred dollars' worth of property taxed.

Sec. 2. The city council shall have, in addition to the powers already granted, full and exclusive power to grant or refuse licenses to sell merchandise, real estate, money, and pawn brokers; to storage and forwarding or commission merchants; to lumber merchants and auctioneers; to hawkers and pedlars, either at wholesale or retail; to insurance, except mutual insurance companies; to keepers of billiard tables, nine or ten pin alleys, bagatelle tables, or shuffling boards; to livery stable keepers, and also for the running of carriages or any other vehicles for conveying persons or
70 property for hire; for all public concerts or exhibitions for the public entertainment or amusement, and to require and receive for each license such sum of money as they may deem expedient and just. And all judgments rendered for violations of any ordinance in relation to licenses shall be liens upon all the property used in violation of said ordinance, and the same may be sold to satisfy the execution.

Sec. 3. For the purpose of securing the city from the destructive ravages of fire, the city council shall have power and authority to prohibit, by ordinance, the erection of any building, or of any addition to any building heretofore erected, except the outer walls thereof shall be composed entirely of brick or stone and mortar, except by permission of the city council, and to provide for the prompt removal of any building or addition whatsoever erected contrary to the intent and meaning of this section. And the city council shall also have full power to order and enforce the repair or removal of any building whatever which shall appear to them to endanger the
71 safety of the city or of the inhabitants thereof, either from fire or falling; and all judgments for the violation of any ordinance passed by virtue of this section shall be liens upon the real estate upon which such building is located, and the same *is located, and the same* shall be sold to satisfy the execution.

Sec. 4. The production of a private copy of any ordinance of the city in any suit to which the city is a party shall be "prima facie" evidence that said ordinance has been legally passed and published.

Sec. 5. So much of the present city charter of said city as conflicts with this act is hereby repealed.

Sec. 6. This act to take effect from and after its publication in the Iowa State Gazette and the Burlington Hawkeye, at the expense of the city.

Approved January 22, 1853.

72 An act to amend the charter of the city of Burlington.

SEC. 1. *Be it enacted by the general assembly of the State of Iowa,* That the charter of the city of Burlington be, and the same is hereby, so amended as to authorize and require the present board of aldermen of said city to classify, in order that one half of said aldermen shall be elected each year, in the manner and at the time now provided by said charter and its amendments.

SEC. 2. The classification shall take place at such times as may be agreed upon by the present city council, and in such manner as they may determine; provided that said classification shall take place before the first Monday in February, 1855.

SEC. 3. In classifying they shall take the wards in numerical order from No. 1 up; the aldermen in the first ward shall first classify in the following manner: The recorder shall write on two slips of paper, on one the word "one," and on the other the word "two," shall fold them and deposit them in a hat, box,
or other place, and the aldermen from said ward shall draw; the one
73 drawing the paper with the word "two," shall continue in office two years from the time of his election, and until his successor is elected and qualified; and they shall so proceed to classify until all the wards of said city shall be classified.

SEC. 4. When new wards shall be organized in said city, and the aldermen elected, they shall be classified in the manner above provided.

SEC. 5. The aldermen drawing the long term shall be, and they are hereby, invested with all the power of aldermen as fully as though they were again elected and qualified.

SEC. 6. The aldermen hereafter to be elected shall be elected for two years from their election, and until their successors are elected and qualified.

SEC. 7. A removal out of the ward by an alderman shall vacate the seat of said alderman, which shall be filled as now provided by the charter.

SEC. 8. The production of a printed copy of any ordinance of said city, in newspaper, book, or pamphlet, in any suit to which the city is a party
shall be prima facie evidence that said ordinance has been legally
74 passed and published.

SEC. 9. This act shall take effect and be in force from its publication in the Burlington Gazette, and to be paid for by said city; and all acts or parts of acts before passed, conflicting with the provisions of this act be, and the same are hereby, repealed.

Approved January 17th, 1855.

I certify that the foregoing act was published in the Burlington Gazette on 22d January, 1855.

GEO. W. McCLEARY, *Secretary of State.*

75 *Demurrer to answer.*

And afterward, on the 26th day of May, 1861, the following demurrer was filed by the plaintiffs:

Southern division of the U. S. D. C. for Iowa, March term, 1861.

MITCHELL & GLOVER
vs.
THE CITY OF BURLINGTON.

The plaintiffs demur to the answer of the defendant filed 25th March, 1861, and for cause of demurrer say:

1st. Because the petition alleges that the plaintiff became the holders of the bonds named before they were due, and the answer does not allege

that the plaintiffs knew for what purpose the bonds were to be issued, or the money raised therefrom applied, and an averment of notice to Clark, Brother & Co., knew for what purpose they were to be issued is no bar to the plaintiffs' right to recover.

2d. Because the answer avers that the Burlington, Mount Pleasant plank-road was a private corporation, which averment contradicts
76 the laws of Iowa on that subject, of which laws this court will take judicial notice.

3d. Because the construction of a plank-road from Mount Pleasant to Burlington is a public work, for a public purpose, beneficial to the town of Burlington, and the said corporations under the charter cited, had full and complete power to submit the question of borrowing of money for such a purpose to the legal voters thereof, and upon the adoption of such a proposition by the requisite majority, the proper officers of said city had a right to issue said bonds, and the holder was not bound to look to the appropriation of the borrowed money; and in the absence of an averment to the contrary the court will presume all the forms of the law complied with.

4th. Because by the charter of said city, authority was granted to the corporation to borrow money for a public purpose—that the construction
77 of a plank-road by the city of Burlington, either to or through said city, is a public purpose, and the holder of such a bond is not bound to inquire whether the plank-road is within or without the limits of the city. In the absence of an averment to the contrary the holder is presumed to be bona fide, and the city is estopped by its bond, as against a bona fide holder, to allege its own fraud and evade the payment of its debts.

5th. Because the city of Burlington in its corporate authority had a right to borrow money upon a proper vote of its citizens for any public purpose. A plank-road is a public purpose; and there is no averment of any notice to the plaintiffs of any intent to borrow money, nor of any borrowing of money and appropriating it for an illegal purpose; and in the absence of such notice the defense set up is no bar to the plaintiffs' action.

6th. Because the acts referred to in the answer provide that the city council of Burlington and its inhabitants are the judges of the pro-
78 priety of borrowing money for any public purpose. There is no allegation in the answer that the forms of the statute are not complied with. There is no allegation of notice of any informality in the issue of the bonds to the plaintiffs, and the defendants are, in the absence of such notice, and in the absence of an averment that the forms of law were not complied with, estopped from setting up that a plank-road which they are presumed to have determined was a public purpose when voted is not a public purpose now when they have borrowed the money and acquiesced in its lawfulness for ten years.

GRANT, *for Pltffs.*

79 In the district court of the United States, district of Iowa, southern division.

MARCH 19, 1861.

ELIZUR MITCHELL *et al.*
v.
THE CITY OF BURLINGTON.

In this cause the defendants have until Friday to plead.

FRIDAY, *March* 21, 1862.

ELIZUR MITCHELL AND WILLIAM B. GLOVER
v.
THE CITY OF BURLINGTON.

This cause is continued.

District court of the United States, district of Iowa, southern division.

I, J. C. Burns, clerk of the district court of the United States in and for the district aforesaid, certify that the above is a true and correct transcript of the record entries in the above-entitled cause as fully as the same appears of record in my office at Keokuk, in said district.

Witness my hand and the seal of the said court this 5th day of November, 1862.

[SEAL.]

J. C. BURNS, *Clerk*,
By EDW'D MUMM, *Dep'y*.

80 And be it remembered that afterwards, in the circuit court of the United States within and for the district of Iowa, the following further proceedings were had in the above-entitled cause, viz:

On the 13th day of November, A. D. 1862, it being of the November term of the said court, the following order was made, to wit:

ELIZUR MITCHELL *et al.*
v.
THE CITY OF BURLINGTON. } No. 59.

Ordered that this cause stand continued.

And afterwards, on the 18th day of May, A. D. 1863, it then being of the May term of the said court, 1863, the following order was made, to wit:

ELIZUR MITCHELL *et al.*
v.
THE CITY OF BURLINGTON. } No. 59.

This cause is continued by agreement of the parties

81 And afterward, on the 9th day of November, A. D. 1863, it still being of the October term of the said circuit court, the following order was made in the above-named cause, viz:

ELIZUR MITCHELL *et al.*
v.
THE CITY OF BURLINGTON. } No. 59.

This cause is continued under the general order.

And afterward, on the 13th day of May, A. D. 1854, it being of the May term of the said circuit court, the following order and entry were made:

ELIZUR MITCHELL AND WM. B. GLOVER
v.
THE CITY OF BURLINGTON. } No. 59.

This cause now coming on to be heard upon the demurrer of the plaintiff to the answer of the defendant, and the same being heard and considered, the demurrer was overruled. And the plaintiff electing to stand

82 upon his demurrer it was ordered that judgment be entered for the defendant.

Whereupon it is considered by the court that the law of the case is with the defendant, and that the plaintiff take nothing by his complaint. And thereupon it is considered that the defendant recover of the plaintiff the costs in this cause accrued, taxed at $, and that he have execution therefor.

And afterward came the plaintiff, by his counsel, and filed his writ of error herein, which was allowed by the court. And the plaintiff afterward offered his bond for costs, and the same was approved by the court, and was accordingly indorsed and filed in the cause. And on the same day the plaintiff filed a copy of the writ of error for the use of the defendant in error.

83 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the ninth circuit and for the district of Iowa, greeting.

Because in the record and proceedings as also in the rendition of a judgment in a plea in said circuit before you, between Elizur Mitchell and William B. Glover, plaintiffs, and the city of Burlington, defendants, a manifest error hath happened to the damages of said plaintiffs as alleged by his complaint, and it being fit that the error, if any there has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in said
84 Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further justice to be done them, to correct that error, what of right and according to the law and courts of the United States should be done.

Witness the Hon. Roger B. Taney, chief justice of the United States, this 16 of May, A. D. 1864, and of the independence of the United States the eighty-eighth.

In testimony whereof, the clerk of said court has affixed his name and seal of said circuit court the day above written.

[SEAL.] W. G. WOODWARD,
Clerk of the Circuit Court of the United States, District of Iowa.

The execution of this writ appears by the transcript hereto annexed. A copy of this writ was lodged in this office for the defendant on the 13th day of May, 1864.

W. G. WOODWARD, *Clerk.*

Filed May 13, 1864.

85 *Copy of bond.*

Know all men by these presents that we, Elizur Mitchell and William B. Glover, as principals, and Charles Whitaker as surety, are held and firmly bound to the city of Burlington, Iowa, in the penal sum of two hundred dollars, to which payment we bind ourselves and each of us. Given under our hands this 16th day of May, 1864.

The condition of this obligation is this: that if said obligors shall prosecute to effect a writ of error from the Supreme Court of the United States to the circuit court of the same in the district of Iowa, in a cause wherein said obligors, Mitchell and Glover, are plaintiffs in error, and the said obligee, defendant in errror, and answer to the defendant in error, and pay all damages and costs if they fail to make their plea good, this obligation is to be void; otherwise, to remain in full force.

ELIZUR MITCHELL,
By J. GRANT, *his Att'y.*
WM. B. GLOVER,
By J. GRANT, *his Att'y.*
CHARLES WHITAKER.

Endorsed: Filed May 13, 1864.

86 UNITED STATES OF AMERICA, *District of Iowa:*

I, W. G. Woodward, clerk of the circuit court of the United States within and for the district of Iowa, hereby certify that the foregoing eighty-five

pages of writing constitute a full, true, and complete transcript of the record and proceedings in the said circuit court, in the above-entitled cause, as fully as they remain of record in my office.

In testimony whereof, I hereunto set my hand and affix the seal of the said circuit court, at Des Moines, this the 23d day of August, A. D. 1864.

[SEAL.] W. G. WOODWARD,
Clerk of the said Circuit Court.

Costs.

Clerk, C. C	$9 90
Do. D. C	6 10
Marshal	10 50
Att'y	20 00
Transcript, certif'd, seal	14 35
	60 85

87 UNITED STATES OF AMERICA, *ss:*

To the city of Burlington, Iowa, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the ninth circuit and for the district of Iowa, wherein Elizur Mitchell and William B. Glover are plaintiffs and you are defendant in error, to show cause, if any there be, why the judgments in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Samuel F. Miller, one of justices of the said Supreme Court of the United States, this the 18th day of May, A. D. 1864.

SAM. F. MILLER, *Judge 9th Circuit.*

88 The city of Burlington does hereby acknowledge service hereof by reading, and by copy thereof duly served upon us this 31st day of May, A. D. 1864.

CHAS. H. PHELPS, *City Sol'r.*

89 *Assignment of errors.*

U. S. Supreme Court, December T., A. D. 1864.

MITCHELL AND GLOVER, plaintiffs in error, *vs.* THE CITY OF BURLINGTON, defendant in error. } Writ of error from the district of Iowa.

Now comes the plaintiff in error in the record of this above-entitled cause, and say that the court below erred in its decision, and therefore the plaintiffs in error assign the following causes, to wit:

1st. The court erred in overruling demurrer of plaintiff in error to answer of defendant in error.

2nd. The court erred in rendering judgment in favor of defendant in error. That the bonds of defendant sued on were unconstitutional and void.

Wherefore plaintiffs in error pray for a reversal of said decision and for costs.

JAMES GRANT,
Att'y for Plaintiffs in Error.

Filed September 27, 1864.